Filed 7/20/16 In re A.C. CA1/1

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

In re A.C., a Person Coming Under the Juvenile Court Law.	
THE PEOPLE, Plaintiff and Respondent, v. A.C., Defendant and Appellant.	A145988 (Contra Costa County Super. Ct. No. J1300696)

MEMORANDUM OPINION[1]

Upon successfully invoking Proposition 47 to reduce his felony receipt of stolen property adjudication to a misdemeanor, the minor, A.C., unsuccessfully sought to expunge his DNA record from state databanks. His appeal raises the same issues this court addressed in *In re J.C.* (2016) 246 Cal.App.4th 1462 (*J.C.*), and for the reasons set forth therein, we affirm the juvenile court's order denying expungement.

As relevant here, California law requires "any juvenile who is adjudicated under Section 602 of the Welfare and Institutions Code for committing any felony offense" to provide a DNA sample so that his or her DNA profile may be included in the state

[1] This matter is properly disposed of by memorandum opinion pursuant to California Standards of Judicial Administration, standard 8.1.

databank. (Pen. Code, § 296, subd. (a)(1).)[2] The Attorney General effectively concedes the only basis on which A.C. was required to provide a DNA sample was that his offense was a felony at the time of adjudication.

Proposition 47 was enacted and became effective in November 2014.[3] (*J.C., supra,* 246 Cal.App.4th at p. 1469.) This proposition " 'reduce[d] penalties for certain offenders convicted of nonserious and nonviolent property and drug crimes,' " including certain thefts if the value of the stolen property is no more than $950. (*Ibid.*; § 490.2, subd. (a).) Under section 1170.18, "persons previously convicted of a felony 'who would have been guilty of a misdemeanor under [Proposition 47]' had it been in effect at the time of their offense" are entitled to petition for resentencing to a misdemeanor or, if their sentence has already been completed, apply to have the felony conviction designated a misdemeanor. (*J.C.*, at p. 1470; § 1170.18, subds. (a), (f).) Section 1170.18 also provides, "Any felony conviction that is recalled and resentenced . . . or designated as a misdemeanor . . . shall be considered a misdemeanor for all purposes, except that such resentencing shall not permit that person to own, possess, or have in his or her custody or control any firearm or prevent his or her conviction [of certain firearms-related offenses] . . . ." (§ 1170.18, subd. (k).)

Under section 299, subdivision (a), a person can seek expungement of his or her DNA record "if the person has no past or present offense or pending charge which qualifies that person for inclusion within the [state databank] and there is otherwise no legal basis for retaining the specimen or sample or searchable profile." Section 299 identifies particular circumstances in which expungement may be sought, including when the underlying conviction or disposition has been reversed and the case dismissed or when the person is found factually innocent of the underlying offense. (§ 299, subd. (b.).) At the time A.C. sought expungement, section 299, subdivision (f) provided:

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[2] All further statutory references are to the Penal Code.

[3] The voters enacted Proposition 47, the Safe Neighborhood and Schools Act, on November 4, 2014, effective the next day. (Cal. Const., art. II, § 10, subd. (a); *J.C., supra,* 246 Cal.App.4th at p. 1469.)

"Notwithstanding any other provision of law, including Sections 17, 1203.4, and 1203.4a, a judge is not authorized to relieve a person of the separate administrative duty to provide [a DNA sample] . . . if a person . . . was adjudicated a ward of the court by a trier of fact of a qualifying offense as defined in subdivision (a) of Section 296, or . . . pleads no contest to a qualifying offense as defined in subdivision (a) of Section 296."

In *Alejandro N. v. Superior Court* (2015) 238 Cal.App.4th 1209 (*Alejandro N.*), the Fourth District Court of Appeal held a person whose felony offense has been redesignated as a misdemeanor under Proposition 47 is entitled to expungement of his or her DNA record if there is no other basis for retaining it. (*Alejandro N.*, at pp. 1227, 1230.) The court reasoned "[t]he plain language of section 1170.18, subdivision (k) reflects the voters intended [a] redesignated misdemeanor offense should be treated exactly like any other misdemeanor offense, except for firearm restrictions" and concluded, given their choice "to extend the benefits of Proposition 47 on a broad retroactive basis[,] . . . the voters likewise intended to provide retroactive relief with regard to retention of already-secured DNA samples." (*Alejandro N.*, at pp. 1227–1228.)

Two months after *Alejandro N.*, *supra*, 238 Cal.App.4th 1209 was decided, Assembly Bill No. 1492 was signed into law with an effective date of January 1 of this year. (Stats. 2015, ch. 487; *J.C.*, *supra*, 246 Cal.App.4th at p. 1471.) As relevant here, the bill amended section 299, subdivision (f) "by inserting '1170.18' into the list of statutes that do not authorize a judge to relieve a person of the duty to provide a DNA sample." (*J.C.*, at p. 1472.) Thus, section 299, subdivision (f) now provides, "Notwithstanding any other law, including Sections 17, 1170.18, 1203.4, and 1203.4a, a judge is not authorized to relieve a person of the separate administrative duty to provide [a DNA sample] . . . if a person has been found guilty or was adjudicated a ward of the court by a trier of fact of a qualifying offense . . . ."

In *J.C.*, this court addressed *Alejandro N.*, *supra*, 238 Cal.App.4th 1209 and the subsequent enactment of Bill No. 1492 and held minors are not entitled to expungement of their DNA records based on the reduction of their offense to a misdemeanor under Proposition 47. (*J.C.*, *supra*, 246 Cal.App.4th at pp. 1470–1475.) Declining to examine

Alejandro N.'s reasoning, *J.C.* concluded that rather than changing the law under Proposition 47, Bill No. 1492 simply clarified existing law that the reduction of a felony to a misdemeanor does not entitle a minor to expungement of his or her DNA record. (*J.C.*, at pp. 1469, 1475–1480.) Thus, Bill No. 1492 does not implicate the rule that "statutory amendments ordinarily may not be applied retroactively," and it therefore "precludes the granting of requests for expungement" even if they were made before its effective date. (*J.C.*, at pp. 1467–1468, 1478–1479.)

In light of *J.C.*'s holding that the rule barring retroactive application of statutory amendments is inapplicable because Bill No. 1492 simply clarified preexisting law that minors are not entitled to expungement of their DNA records when their offense is reduced from a felony to a misdemeanor (*J.C.*, *supra*, 246 Cal.App.4th at pp. 1467–1468, 1480), we need not address A.C.'s arguments that we should follow *Alejandro N.*, *supra*, 238 Cal.App.4th 1209 instead of *Coffey v. Superior Court* (2005) 129 Cal.App.4th 809. *J.C.* decisively rejects this argument, and also A.C.'s claim that Bill No. 1492 is an impermissible amendment to a proposition. (*J.C.*, at pp. 1469, 1479–1480, 1482.) We perceive no distinction between this case and *J.C.* that would provide any basis for reaching a different result here, and we therefore conclude that the juvenile court properly denied the request for expungement of A.C.'s DNA record.

The juvenile court's order denying the minor's request for expungement is affirmed.

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Banke, J.

We concur:

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Margulies, Acting P. J.

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Dondero, J.

A145988, *In re A.C.*